

**102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

COCP No.1228 of 2018

Date of Decision: 8.3.2019

Rajesh Kumar and others

.....Petitioners

Versus

Raj Narain Kaushik

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr Jawahar Lal Goyal, Advocate, for the petitioners.

Mr. Sandeep S. Mann, Sr. Deputy Advocate General, Haryana.

NIRMALJIT KAUR, J. (ORAL)

This order will dispose of a bunch of contempt petitions bearing COCP Nos.1228, 1580, 2317, 2534, 2204, 3843, 3844 and 3726 of 2018; 189 and 190 of 2019, as issue involved therein is identical. However, for convenience, the facts have been taken from COCP No.1228 of 2018.

The writ petitions filed by various petitioners were disposed of to be decided in terms of the judgment passed in CWP No.11254 of 2010, titled as Neelam Rani vs. The State of Haryana and others, and connected cases decided on 15.5.2013. The issue in Neelam Rani's case (supra) was that since the petitioners are drawing salary less than their juniors in JBT cadre are entitled to be stepped up in pay so that their salary does not fall short of the salary, which is earned by their juniors. The respondent-State challenged the said order before the Division Bench in LPA, which was dismissed. Thereafter, the respondent-State filed SLP before the Hon'ble Supreme Court, which was dismissed on the ground of delay, but the question of law was left open with the following observations:-

“The special leave petitions are dismissed on the ground of delay. The question of law is however left open. In other

words, it will be open to the State of Haryana to raise all its points in any pending matter for consideration by the High Court or by this Court.”

Accordingly, in case of Sudhir Kumar and others vs. State of Haryana and others in CWP No.15280 of 2017 and connected writ petitions decided on 30.10.2017, the arrears were ordered to be restricted to a period to 3 years and 2 months prior to the date of filing the writ petition, while distinguishing the case of Neelam Rani's (supra). Thereafter, the matter was further referred in the case of Ram Parsad and others vs. State of Haryana and others, CWP No.14830 of 2017, decided on 20.12.2017, wherein, a direction was issued to take into consideration the notification dated 21.11.2017 and process the case of the petitioners on individual basis and pass orders accordingly. As per the said notification, principal decision was to implement the judgment in Neelam Rani's case (supra) and step-up pay of the existing employees, who are covered under the said judgment appointed on or before 1.1.2006 in the shape of personal pay to be subsumed in future increments at par with their juniors appointed after 1.1.2006 but before 18.8.2009.

In pursuance to the order passed by this Court on the last two dates of hearing seeking clarification as why the orders are not complied with, affidavit of Dusmanta Kumar Behera, IAS, Director Elementary Education, Haryana dated 7.3.2019 has been filed today, wherein, it is stated that the respondent-State is in process of deciding the claim of the petitioners. However, the matter is delayed on account of the notification dated 7.2.2019 that in future decision would be taken in view of the notification dated 7.2.2019. In view of the said notification, pay of the post

of 2000 incumbent will get the revised pay.

Learned counsel for the petitioners has raised three apprehensions, firstly it shall result in reducing the pay band; secondly some of them have already been granted as per the earlier pay band and third the said notification does not apply to the incumbents appointed prior to 1.1.2006.

Learned counsel for the respondent-State while explaining the same submitted that earlier even the incumbent appointed prior to 1.1.2006 were getting more salary. In case the needful is not done, there would be more anomaly and the present notification shall be applicable even those prior to 1.1.2006, which is evident from the proviso to Rule 2 and further evident from Rule 4 of the notification dated 7.2.2019. The proviso to Rule 2 of the said notification reads as under:-

“Provided that where Grade Pay of the post shall be upgraded after the 1st January, 2006, the entry level pay of such post shall be determined by multiplying minimum of the existing pay scale as on 31st December, 2005, by a factor of 1.86 and rounding of the resultant figure to the next multiple of ten. The grade pay corresponding to the upgraded scale shall be payable in addition.”

With respect to the argument that some of the petitioners have already been granted arrears as well as interest as per Neelam Rani's case (supra) prior to the coming of judgment in Sudhir Kumar's and Ram Parsad's cases (supra), it was submitted that they are in the process of adjusting the excess amount paid to the such persons and therefore, the petitioners cannot take advantage of the same.

In view of the above, this Court does not find that there is any willful disobedience of the order passed by this Court. The respondent-State undertakes to comply with the order in terms of Neelam Rani's case (supra) and the subsequent notification and judgment rendered above by taking separate decision in each of the cases within six months from today. In view of the above, the present petitions are disposed of with a direction that entire process be completed within six months from today. The amount due to the petitioners in terms of the judgments in Neelam Rani's and subsequently in Sudhir Kumar's and Ram Parsad's cases (supra) be made to the petitioner within stipulated period as of six months. This Court may clarify that the above direction is without prejudice to the right of the petitioners to challenge the notification dated 7.2.2019.

8.3.2019
sharmila

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No